IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

ST.Rev..No. 20 of 2007

(TA.202/2004 of SALEAS TAX APPELLATE TRIBUNAL,ADDL.BENCH, PALAKKAD.).

REVISION PETITIONER/APPELLANT/REVENUE:

STATE OF KERALA,
REP. BY JOINT COMMISSIONER (LAW) IN-CHARGE,
COMMERCIAL TAXES, ERNAKULAM.

BY SR. GOVERNMENT PLEADER SHRI MUHAMMED RAFIQ.

RESPONDENT/RESPONDENT/ASSESSEE:

M/S. VISWASILPI JEWELLERS,
TOWN BUS STAND BUILDING, PALAKKAD.

BY

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 07/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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SALES TAX REVISION No. 20 OF 2007

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Dated this the 7th September, 2007

O R D E R

H.L. Dattu, C.J.:

The Revenue being aggrieved by the orders passed by the Kerala Sales Tax Appeallate Tribunal in T.A.No. 202 of 2004 dated 28th April, 2006 has preferred this Revision Petition.

2. The facts in brief are:The respondent in this Revision is an assessee registered under the provisions of the Kerala General Sales Tax Act (hereinafter for the sake of brevity as Act). The assessee is a Co-operative Society registered under the provisions of the Co-operative Societies Act. It is primarily engaged in the business of gold and silver ornaments. For the assessment year 1998-99, the assessee had filed its annual return before the assessing authority and in that, it had claimed exemption from payment of sales tax in the light of the notification issued by the State Government in S.R.O.No. 1727 of 1993. The claim so made by the assessee was rejected by the assessing authority. Thereafter, the assessee had preferred an appeal before the first appellate authority. By order dated 15.02.2003 in S.T.A.No. 820 of 2002, the first appellate authority has allowed the appeal filed by the assessee. Aggrieved by the said order passed by the first appellate authority, the State had carried the matter by way of second appeal before the Sales Tax Appellate Tribunal. The Tribunal, after noticing the contentions canvassed by the Revenue as well as the assessee, has confirmed the orders passed by the

first appellate authority. That is how, the Revenue is before us in this Revision.

3. The Revenue has raised the following questions of law for consideration and decision of this court. They are as under:

> *"A. Whether the First Appellate Authority as well as the Tribunal were justified in granting exemption from payment of sales tax in respect of the sales turnover of jewellery placing reliance on Entry (4) of Schedule IV of SRO. 1727/93?*
>
> *B. Is not on a true construction of the relevant entries and clauses of SRO. 1727/93, exemption is confined only to sales turnover of handicrafts goods? Whether the appellate Tribunal is justified in treating jewellery (gold ornaments) as handicrafts goods to extend the exemption to the assessee.?*
>
> *C. Whether the assessee in the instant case is entitled to exemption from payment of sales tax relying on Entry 4 of Schedule IV of SRO. 1727/93?"*

4. Shri Muhammed Rafiq , learned Senior Government Pleader appearing for the Revenue would submit that the tenor of the notification issued by the State Government would encompass only the products which are manufactured from forest produce and, therefore, the first appellate authority and the Tribunal were not justified in setting aside the orders passed by the assessing authority, wherein he had rejected the claim of the assessee for allowance of exemption under the aforesaid notification. In order to appreciate the contentions canvassed by the learned counsel, the material portion of the notification read with Schedule IV appended to the said notification requires to be extracted. They are as under:

> *"S.R.O.No.1727/93: In exercise of the powers conferred by Section 10 of the Kerala General Sales Tax Act, 1963 (Act 15*

of 1963) and in supersession of the notifications mentioned in Schedule I, the Government of Kerala having considered it necessary in the public interest so to do, hereby make an exemption:-

I. In respect of the tax payable under the said Act;

(1) on the turnover of sale or purchase as the case may be , of goods mentioned in Schedule II;

(2) xx xx xx

(3) by Co-operative Societies specified in column (2) of Schedule IV on their turnover of sale or purchase, as the case may be, of goods specified in column (3) subject, to the conditions, if any, specified in column (4) thereof, against each."

Schedule IV appended to the notification provides for exemption of turnover on the sale or purchase of goods effected by the Co-operative Societies . Sl.No.4 of Schedule IV is relevant for the purpose of this case and the same reads as under.

Sl. No.	*Name of Society*	*Description of goods and the turnover which is exempted.*	*Conditions*
1.	*xx*	*xx*	*xx*
2.	*xx*	*xx*	*xx*
3.	*xx*	*xx*	*xx*
4.	*Co-operative Societies of workers.* *Explanation:* *A Co-operative Society in which not less than 90% of the members are workers*	*On the sale of:* *(1) Bamboo mats and bamboo products other than bamboo ply.* *(2) Granite products* *(3) Handicrafts goods* *(4) Rattan goods, and* *(5) Screw pine mats & baskets manufactured by them within the*	*Nil.*

shall be deemed to be a Co-operative Society of workers.		*State.*
5.	*xx*	*xx*	*xx*

A perusal of the Schedule IV would indicate that column (3) of Schedule IV of the notification speaks of exemption on the sale of the bamboo products other than bamboo ply, granite products, handicrafts goods etc.

5. It is not in dispute that the assessee before the assessing authority was a Co-operative Society of workers. It is also not in dispute that Society produces/manufactures silver articles and gold jewellery. The question now arises for consideration is whether production of silver articles and gold jewellery can be brought under the expression*" Handicrafts goods".*

6. The expression *"Handicrafts goods"* had come up for interpretation before the Apex Court in a matter which arose under the provisions of the Central Excise Act. In the said decision, the Court has laid down certain tests for determination of handicrafts. They are, it must be predominantly made by hand. It does not matter if some machinery is also used in the process; it must be graced with usual appeal in the nature of ornamentation or in lay work or some similar work lending it an element of artistic improvement. Such ornamentation must be of a substantial nature and not a mere pretense. The Court, while considering whether a furniture is "handicraft", has observed that, furniture does not qualify as "handicraft" because it must be predominantly made by hand. In the instant case, it is not the case of the assessing authority that the silver and gold articles are made or produced by the assessee by

using any machinery. The assessing authority has rejected the claim only on the ground that the Schedule appended to the notification is primarily meant for those handicrafts goods manufactured from forest produce. This view of the assessing authority cannot be sustained in view of the clear language employed in the notification.

7. Keeping the aforesaid aspect in view, if we look at the notification and the Schedule IV appended to the said notification, issued by the State Government granting exemption, we are of the opinion that both the first appellate authority as well as the Tribunal are justified in granting exemption on the sale of silver and gold ornaments by upsetting the orders passed by the assessing authority . In view of the above, the Sales Tax Revision, filed by the Revenue requires to be rejected and it is rejected.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

lk/dk